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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,235	12/16/2003	Jody Lynn Hoying	9456	6351

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EXAMINER

JOHNSON, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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06/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/737,235	Applicant(s) HOYING, JODY LYNN	
	Examiner Jenna-Leigh Johnson	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/22/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on March 12, 2008, has been entered. Claim 2 has been cancelled. Claims 12 and 13 have been amended. Therefore, the pending claims are 1 and 3 - 15.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 3 – 5, 8, 12, and 15 stand rejected under 35 U.S.C. 102(e) as being anticipated by Provost et al. (2004/0157036) for the reasons of record.
4. Claims 1, 3, 6 – 10, 12, 13, and 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Sorimachi et al. (5,508,080) for the reasons of record.
5. Claims 1, 4, 5, 8, and 12 - 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Mende (5,180,620) for the reasons of record.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Sorimachi et al. in view of Kotek et al. (6,120,718) for the reason of record.
8. Claims 1, 3 – 11, and 13 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson (6,048,600) for the reasons of record.

Double Patenting

9. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 27 of copending Application No. 10/737,306 for the reasons of record.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1 and 3 – 15 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 21 of U.S. patent 7,172,801 (formerly Application No. 10/737,307) for the reasons of record.

11. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 10/737,430 for the reasons of record.

This application has been allowed, but has not been issued. Upon issuance of the allowed patent, the rejection will no longer be considered a provisional rejection.

12. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 44 of copending Application No. 10/737,640 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 25 of copending Application No. 11/156,020 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

14. Applicant's arguments filed March 12, 2008 have been fully considered but they are not persuasive. The applicant argues that the prior art references, Provost, Sorimachi and Mende cannot have a linear orientation and a longitudinal axis because they have a circular shape. However, it is unclear how

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the applicant is defining these terms so that they exclude circular shapes. The phrase “a distinct linear orientation in the MD-CD plane” is considered to require that a line can mapped over the discontinuity in the MD-CD plane or that the point is positioned such that it is oriented in relation to other discontinuities in the structure to create rows or columns of discontinuities. With regards to the first interpretation any shape which is larger than a point can have a line of distinct length mapped over it, then it is considered to have a distinct linear orientation. Even if the discontinuity is a circle so that all points are equidistant from the center of the discontinuity does not exclude a line from being drawn over the discontinuity. However, the applicant argues that there is nothing linear about a circle. First it is noted that parts of a circle such as the diameter and radius are indeed linear. Further, the applicant is claiming the discontinuity has a linear orientation and does not recite that the discontinuity is a linear shape. As exemplified by a diameter drawn onto a circular shape, a circle can be given a linear orientation in any direction.

With regards to the second interpretation, it is noted that the applicant argues that the distinct linear orientation cannot be describing the rows or columns of discontinuities because this orientation relates to a group of discontinuities and the claimed orientation is suppose to define the orientation of a single discontinuity. However, the term orientation is defined as the position or location of an object relative to other objects or a direction followed in a trend or movement. Hence, a single discontinuity orientation must be defined relative to other discontinuities in the plane. Thus, the placement of the discontinuity in a line of other discontinuities orients the single discontinuity in a linear pattern. Hence, the discontinuity has a linear orientation because it is in a line of discontinuities. Therefore, it is not felt that circular discontinuities are excluded from having a linear orientation. If the applicant considers these terms to have a different definition, then the applicant should make it clear on the record how the terms in the claim are intended to be defined.

Further, it is noted that any shape would a longitudinal axis, since that would be the axis that runs in the longitudinal direction of the fabric. Any plane has a longitudinal axis and a latitudinal axis oriented at a 90 degree angle from each other. In terms of fabrics, the longitudinal direction is generally the machine direction of the fabric. Therefore, the axis of the discontinuity that runs in the machine direction would be the longitudinal axis. However, the fabric can be rotated or reoriented so that a different direction, such as the cross machine direction is defined as the longitudinal direction. Thus, the axis in the cross machine direction would be the longitudinal axis. Regardless of which direction is oriented as the longitudinal direction, the axis running in the direction defined as the longitudinal axis is considered the longitudinal axis. For purposes of examination the longitudinal direction is considered to be the machine direction. And any shape larger than a point, whether it is circular or not inherently has a longitudinal axis. If the applicant intends a different direction to be the longitudinal direction then the applicant needs to clearly define the term.

For the reasons set forth above, any circular discontinuity is considered to have a distinct linear orientation and a longitudinal axis. Thus, the rejections over Provost, Sorimachi, and Mende are maintained.

15. With regards to Mende, the applicant further argues that the discontinuities are not formed by reorienting the fibers and thus does not read on the claimed product. However, the step of forming the projection by reorienting the fibers is considered to be a method limitation. The patentability of a product is determined by the structure of the product and not the method of making the product. Therefore, unless it is shown that the method produces a structurally different final product then the method is not sufficient to distinguish over the prior art. In the present case, both final products will have fibrous projections extending from the surface of the nonwoven fabric which are considered to be the same final structure. The burden is on the applicant to show that the reorienting step would create a significantly different product from the product taught by Mende. Thus, the rejection is maintained.

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16. Further, the applicant argues that the projections would only be circular and the portion of the disclosure talking about different shaped structure which are circular, oval, square, or any other appropriate shape only refers to the holes in the forming plates. However, Mende discloses that the projections are disposed around each of the holes. Hence a circular hole would create a circular projection. And a different shaped hole would inherently create a different shaped projection, i.e., a square hole, a square projection, an oval hole, an oval projection, etc. Thus, Mende teaches that different shaped projections can be used in the composite. Further, the different shapes would not have the sides equidistant from the sides and would have the applicants claimed linear orientation. In fact, a square structure would have linear sides. Therefore the rejection is maintained.

17. Finally, the applicant argues that Hansson fails to read on the claimed product because the discontinuities were not formed by reorienting the fibers. However, Hansson used a corrugated surface layer attached to a base layer. However, the corrugated layer is formed by bending the nonwoven to create the corrugations which would reorient the fibers out of the MD-CD plane and in the direction orthogonal to the MD-CD plane of the base layer. Even if the applicant does not consider the corrugation process to be a reorienting process, the reorienting limitation is considered to be a method step. As set forth above, the patentability of the product is based on the final structure of the product itself and not the method of making the product. Therefore, unless it is shown that the method produces a structurally different final product then the method is not sufficient to distinguish over the prior art. In the present case, both final products will have fibrous projections extending from the surface of the nonwoven fabric which are considered to be the same final structure. The burden is on the applicant to show that the reorienting step would create a significantly different product from the product taught by Hansson. Thus, the rejection is maintained.

Conclusion

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18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Johnson whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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jlj

June 9, 2008

/Jenna-Leigh Johnson/
Primary Examiner, Art Unit 1794